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No. 88-2035

In The

Supreme Court of the United States

October Term, 1989

ADAMS FRUIT COMPANY, INC.,

Petitioner,

v.

RAMSFORD BARRETT, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether the Migrant and Seasonal Agricultural Workers Protection Act preempts the exclusive remedy of state workers' compensation benefits for bodily injury.

LIST OF PARTIES

The Petitioner is Adams Fruit Company, Inc. The Respondents are Ramsford Barrett, David Sapp, Edward Tyrell, Daryl Hamilton, Garfield Hills, Jr., Anthony Gill, Lynval Aldridge, Semore Hayles, Audley Kirlew and Winston Warner.

The Petitioner is a corporation with no parent companies, subsidiaries, or affiliates.

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BRIEF FOR THE PETITIONER

OPINION BELOW

The decision of the Court of Appeals for the Eleventh Circuit is reported at 867 F.2d 1305 (11th Cir. 1989) and is set out as Pet. App. A, p. 1a.

The order of the U.S. District Court for the Middle District of Florida, granting summary judgment to Adams Fruit, is set out as Pet. App. B, p. 16a.

JURISDICTION

The judgment of the Court of Appeals was entered on March 15, 1989, and is attached as Pet. App. C, p. 20a. No rehearing was sought. The petition for a writ of certiorari was filed on June 13, 1989 and was granted on October 2, 1989. The jurisdiction of this court is invoked under 28 U.S.C. §1254.

STATUTES AND REGULATIONS INVOLVED

Sections 1801, 1841, 1854 and 1871 of the Migrant and Seasonal Workers Protection Act (AWPA), 29 U.S.C. §1801 et seq., Pet. App. E, p. 31a.

Excerpts from the legislative history of AWPA, H.R. Rep. No. 97-885, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. Code Cong. & Ad. News, p. 4547, (no Senate report submitted) Pet. App. H, p. 38a.

U.S. Department of Labor regulation, 29 C.F.R. §500.122(b), Pet. App. F, p. 36a.

Section 440.11 *Florida Statutes*, Florida Workers' Compensation Act, Pet. App. G, p. 37a.

STATEMENT OF THE CASE

The respondents, plaintiffs below, are a group of ten farm workers employed by Adams Fruit Company, Inc., the petitioner. They were injured in an accident on May 8, 1985 when an allegedly defective tire blew out while the workers were being transported in an Adams Fruit van.

(J.A. 2). The workers sought and received benefits, through Adams Fruit's workers' compensation policy, for their damages. (J.A. 11-12). These damages were in the form of a payment for all medical treatment and for lost wages as afforded by Florida's Workers' Compensation Act, *Fla. Stat.* §440.01 et seq.

On September 12, 1986, the workers filed suit against Adams Fruit, seeking damages for these same injuries under the Migrant and Seasonal Agricultural Workers Protection Act. (J.A. 2-10). Commonly known as AWPA, the statute regulates the activities of farm labor contractors and farm employers. It was enacted in 1982 "to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations and agricultural employers." 29 U.S.C. §1801, Pet. App. E, p. 31a. It requires farm employers and labor contractors to disclose relevant information and maintain records, to pay wages promptly and in full, to refrain from requiring workers to buy goods or services solely from them, to abide by the terms of their contracts with workers, to provide safe and sanitary housing, and to provide safe transportation for workers. 29 U.S.C. §§1821, 1822, 1823, 1832, and 1841.

The Act also requires the employer or contractor to obtain a liability bond or liability insurance coverage for injuries to the workers while in transport. However, in cases where "an agricultural employer***is the employer of any migrant or seasonal agricultural worker for purposes of a state workers' compensation coverage for such worker in the case of bodily injury or death***[n]o insurance policy or liability bond shall be required***if such workers are transported only under circumstances for

which there is coverage under such State Law." 29 U.S.C. §1841(c) Pet. App. E, p. 32a-33a.

In their complaint, the workers alleged that, under Section 1854 of the statute, they were entitled to additional actual damages for these injuries, or statutory damages of up to $500.00 per plaintiff per violation, whichever was greater, for alleged violations of the motor vehicle safety provisions of AWPA. (J.A. 9). Specifically, the workers claimed that Adams Fruit violated these provisions by overloading the van, using a van with a defective tire, not providing a seat for each occupant,[1] and stowing water containers in an unsafe manner. (J.A. 7-8). The workers also requested an injunction to prevent future violations of this type. (J.A. 9). In addition, the workers alleged three separate notice and record keeping violations unrelated to the accident. (J.A. 8). Adams Fruit's answer to the complaint denied the Plaintiffs' allegations and alleged that the workers had already received recovery for their damages through their workers' compensation claims. (J.A. 13-17). The answer also alleged that the workers' own negligence contributed to their damage (J.A. 16).

In conjunction with a motion to dismiss, (R. 1:2), Adams Fruit filed an affidavit from its workers' compensation carrier attesting to the fact that workers' compensation benefits had been paid to each Plaintiff. (J.A. 11-12).

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[1] Although the general allegations of the complaint fault Adams Fruit for not providing seat belts for each occupant, the claim for relief does not allege this action as a violation, nor do AWPA's implementing regulations require seat belts. *See* 29 C.F.R. 500.100-105.

The affidavit included computer printouts showing all benefits paid on behalf of each Plaintiff for medical expenses and lost wages as of October 30, 1986, the date of the affidavit. (R. 1:6, 3-55). At that time, benefits awarded to the ten Plaintiffs totalled approximately $122,884.00. (R. 1:6, 3-55). Mr. Sapp's benefits were $16,417.00; Mr. Warner's $773.00; Mr. Hill's $1,469.00; Mr. Kirlew's $2,316.00; Mr. Tyrell's $10,804.00; Mr. Barrett's $17,817.00; Mr. Aldridge's $23,097.00; Mr. Hamilton's $10,437.00; Mr. Hayles' $11,440.00; and Mr. Gill's $13,707.00. (R. 6:3-55).

Subsequently, Adams Fruit filed a motion for either full or partial summary judgment on the workers' claims (J.A. 18-19), citing the exclusive remedy provision of Florida's Workers' Compensation Statute, *Fla. Stat.* §440.11, Pet. App. G, p. 37a. The United States District Court for the Middle District of Florida granted a partial summary judgment to Adams Fruit as to any liability for additional damages for bodily injuries brought pursuant to claims for violations of the motor vehicle safety provisions of AWPA. *Barrett v. Adams Fruit Company, Inc.*, No. 86-1301-Civ.-T-17 (M.D. Fla. 1986), Pet. App. B, p. 16a. The order, however, allowed the allegations of miscellaneous notice and record keeping violations to stand. Subsequently, the workers accepted Adams Fruit's offer of $500.00 per Plaintiff to settle this group of claims and they were dismissed. (R. 2:44-45 and J.A. 21-22).

In reaching its decision, the Middle District of Florida determined that the Plaintiffs had already received their actual damages for bodily injury in the form of workers' compensation benefits as required by the Act and gave effect to the exclusive remedy provisions of that law. The

court relied on the rationale expressed in *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987), *cert. den.* ___ U.S. ___, 108 S.Ct. 163 (1987). Pet. App. D, p. 22a. *Roman* held that Congress was cognizant of state workers' compensation laws when enacting AWPA, that AWPA was intended to mesh with state laws, not interfere with or supersede them, and that nothing in AWPA's language or legislative history indicated otherwise. *Roman* also relied on this Court's decision in *United States v. Demko*, 385 U.S. 149 (1966) holding that where a workers' compensation remedy reasonably and fairly covered a group of workers, it was presumed to be the exclusive remedy.

The farm workers then appealed the partial summary judgment to the Eleventh Circuit Court of Appeals, which reversed the partial summary judgment and remanded the case for trial. *Barrett v. Adams Fruit Company, Inc.*, 867 F.2d 1305 (11th Cir. 1989) Pet. App. A, p. 1a. In rejecting *Roman* the Eleventh Circuit acknowledged that no express preemption of state workers' compensation law was apparent in AWPA's language or AWPA's history. However, the court below determined that preemption was necessary in order to fulfill the dual purpose of this statute of providing full recovery to the workers and providing a deterrent to statutory violations.

In interpreting AWPA, the Eleventh Circuit relied heavily on the legislative history of the Farm Labor Contractor Registration Act of 1963 ("FLCRA") and its several amendments and attempted amendments. FLCRA was repealed by AWPA. The Eleventh Circuit also declined to give effect to the existing Department of Labor Regulation promulgated under AWPA which specifically states: "Where a state workers' compensation

law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death." 29 C.F.R. §500.122(b), Pet. App. F, p. 36a.

SUMMARY OF THE ARGUMENT

In drafting AWPA, Congress did not intend that an injured worker collect workers' compensation benefits for motor vehicle-related injuries and sue his employer for additional damages for these same injuries. A plain reading of the statute and its legislative history makes three things clear: First, Congress expressly left open a role for workers' compensation benefits as the recovery for bodily injury under the motor vehicle provisions of the Act. Second, Congress knew that all state workers' compensation law included an exclusivity rule when it passed AWPA as a "consensus bill", a compromise between the interests of farm workers and farm employers. Third, the Department of Labor's contemporaneous regulation honoring the exclusivity provision of workers' compensation law should be entitled to considerable deference.

AWPA expressly acknowledges its purpose to "supplement," not supplant, state law. 29 U.S.C. §1871, Pet. App. E, p. 35a. Under its motor vehicle safety provisions, Section 1841 (b) (1) (C), AWPA requires a farm employer to purchase a liability policy or bond for injuries occurring to farm workers while in transport. However, Section 1841(c) exempts this requirement if workers' compensation coverage "under State law" is applicable

for bodily injuries. Congress clarified the purpose behind this provision by assuring the farm employer "that in those situations where agricultural workers are transported and are covered by state workers' compensation no additional insurance for damage to persons need be obtained." H.R. Rep. No. 97-885, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. Code Cong. & Ad. News 4566 at 20 [hereinafter "House Report"], Pet. App. H, pp. 38a-40a. Congress was aware of the various coverage systems and carefully chose its language in 29 U.S.C. §1841(c). Workers' compensation, if it existed, satisfied its concerns.

The Department of Labor was "the leader and negotiator in th[e] extensive give-and-take meetings" that lead to the formation of AWPA. 128 Cong. Rec. 24,090 (1982) (statement of co-sponsor Senator Hatch); 128 Cong. Rec. 26,008 (1982) (statement of Representative Erlenborn). The Department of Labor subsequently promulgated the following regulation: "Where a state workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death." 29 C.F.R. §500.122(b), Pet. App. F, p. 36a. This regulation, along with others promulgated under AWPA, were published in the Federal Register along with a solicitation of comments or objections. No one objected to the regulation and it was finalized four months later. The court of appeals gave no deference to the Department of Labor Regulation despite the Department's key involvement in negotiating the provisions of AWPA and despite this Court's deference to the decision of a regulatory

agency when a "choice represents a reasonable accommodation of conflicting policies." *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-845 (1984). The court of appeals ignored this Court's sensible and controlling directive.

The court of appeals erred in relying on the legislative history of AWPA's predecessor statute, FLCRA, which did not include provisions for fixed-situs farm employers like Adams Fruit or for workers' compensation, as the legislative intent of AWPA, which did. It strains logic to conclude that AWPA intended to mislead farm employers and expose them to past and present uncovered claims, particularly pain and suffering awards in catastrophic injury cases, which are not included under state workers' compensation benefits. The court of appeals ignored the sufficient, additional deterrents built into the statute when it determined that such a harsh penalty must be exerted against farm employers to insure their compliance with AWPA. The opinion below would turn every workers' compensation claim based on motor-vehicle bodily injuries into a full-blown federal tort trial. The court of appeals' opinion is misguided and disrupts the harmony existing between AWPA and state workers' compensation law.

ARGUMENT

The court of appeals' interpretation of AWPA, creates extraordinary rights for migrant and seasonal farm workers at the expense of agriculatural employers/

farmers. AWPA, which replaced its unworkable predecessor, FLCRA, was a compromise bill drafted for the protection of both farm workers and employers. AWPA expanded statutory protection to cover fixed-situs agricultural employers like Adams Fruit, but it also made it clear that not all of the Act's requirements were appropriate for such employers. Of particular importance for the case, AWPA required fixed-situs employers (as well as contractors) to carry vehicle liability insurance, but it also provided that workers' compensation coverage could substitute for liability insurance for workers injured while in transport.

Many farm employers adhered to Congress' assurance (House Report at 20) that purchasing any coverage beyond workers' compensation was unnecessary. Now, if the court of appeals' opinion is to stand, farmers across the nation who relied on these words are suddenly faced with tremendous potential exposure for non-insured bodily injury claims. This is particularly true for current or past multiple catastrophic injuries for which a court could award substantial pain and suffering or death benefit amounts not provided under workers' compensation law. AWPA expressly provides that its purpose was to protect both workers and employers. AWPA's intent was not to mislead and bankrupt farmers.

The court of appeals viewed this case as one of preemption, but admitted that nothing in the express provisions or legislative history of AWPA indicated an intent to preempt workers' compensation law. Instead, the lower court relied upon the legislative history of FLCRA, which did not cover fixed-situs agricultural

employers and did not expressly deal with workers' compensation, as demonstrating the intent of the Congress that enacted AWPA years later. At the same time, the court of appeals invalidated a Department of Labor regulation promulgated under AWPA. This regulation made clear that workers could not sue an employer over and above workers' compensation benefits for bodily injury damages.

I.

THE MIGRANT AND SEASONAL AGRICULTURAL WORKERS PROTECTION ACT DOES NOT PREEMPT THE EXCLUSIVE REMEDY OF STATE WORKERS' COMPENSATION BENEFITS FOR BODILY INJURY.

A. The Farm Labor Contractor Registration Act (FLCRA).

AWPA's predecessor statute was the Farm Labor Contractor Registration Act of 1963, commonly known as FLCRA. According to Senator Hatch, who co-sponsored AWPA in the Senate, "Congress enacted the current law FLCRA in 1963 to curb the exploitation of migrant agricultural workers and their employers by irresponsible farm labor contractors. Known commonly as crew leaders, these contractors typically traveled the country following the planting and harvesting season." 128 Cong. Rec. 24,090 (1982) (statement of Senator Hatch.) Fixed-situs agricultural employers, like Adams Fruit, were also victimized when crew leaders, lured by more lucrative arrangements, would break previously made contracts to supply labor to a farmer. These farmers faced financial

ruin if they could not get help to harvest their crops in time. *Id.*

Among the many labor contractor abuses was transporting workers long distances to farm work sites in unsafe, uninsured vehicles. *Id. See also* 128 Cong.Rec. 32,464 (Statement of Deputy Undersecretary Collyer); House Report at 1-4. One of the reforms attempted by FLCRA was requiring crew leaders to carry insurance to compensate the workers for any injuries they received during transport. *See* Sen. Rep. No. 202, 88th Cong., 2d Sess., *reprinted in* 1964 U.S. Code Cong. & Ad. News 3695.

Congress did not intend FLCRA's regulations to encompass the fixed-situs farm employer. As explained on the House floor during the introduction of AWPA, "[s]ince FLCRA's enactment***the Department of Labor has misconstrued the terms of the Act's requirements on farmers and other agricultural employers who were never intended to be covered by the Act." *See* 128 Cong. Rec. at 26,010 (statement of Representative Panetta). Under FLCRA, the Department of Labor sometimes required farm owners who hired migrant workers to register as labor contractors and attempted to enforce FLCRA against these farmers even though FLCRA was clearly not designed to meet their situation. *See* House Report at 2; 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer); 128 Cong. Rec. 26,008-09 (statement of Representative Erlenborn). Meanwhile, FLCRA continued to prove unworkable. *See* House Report at 1-5.

B. The Migrant and Seasonal Agricultural Workers Act (AWPA).

Migrant and Seasonal Agricultural Workers Protection Act (AWPA) was enacted in 1982 as a "consensus bill" only after extensive negotiations among representatives of both parties in Congress, organized labor, migrant farm worker groups, representatives of agricultural employers, and the Department of Labor. "For the past 18 months the Department of Labor has engaged in extensive negotiations with the various interest groups to develop new legislation that would strengthen enforcement over labor contractors as well as enhance labor standard protections for migrant and seasonal agricultural workers.***As Secretary Donovan indicated in the letter transmitting the measure, 'the bill represents a consensus among the parties who are most directly affected'." 128 Cong. Rec. 24,090 (1982) (statement of cosponsor Senator Hatch). *See also* House Report at 1. Senate sponsors introduced AWPA as a "compromise worked out by farm worker representatives and employer representatives." 128 Cong. Rec. 24,204 (1982) (statement of cosponsor Senator Quayle). House sponsors introduced AWPA as legislation which "provides a viable solution to the problems of the past, and effectively protects the rights and interests of agricultural employers and farm workers." 128 Cong. Rec. 26,010 (1982) (statement of Representative Panetta). AWPA itself stated that its purpose was "to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers." 29 U.S.C. §1801, Pet. App. E, p. 31a.

Unlike FLCRA, AWPA clearly imposed obligations for safe transportation, safe housing, proper notice, and

record keeping on fixed-situs agricultural employers as well as on farm labor contractors or "crew leaders." 128 Cong. Rec. 24,204 (statement of co-sponsor Senator Quayle). But AWPA relieved farmers of the registration obligations, which continued to apply to farm labor contractors. *Id*. Like FLCRA, AWPA required liability insurance for injuries to workers who were transported in motor vehicles but, in recognition of the fact that it covered employers, AWPA included an exemption from the insurance requirement where "such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law." *See* 29 U.S.C. §1841(c), Pet. App. E, p. 32a. The sponsors of the bill assured farmers "that in those situations where agricultural workers are transported and are covered by state workers' compensation no additional insurance for damage to persons need be obtained." House Report at 20.

By including seasonal workers[2] under the Act and by covering workers employed directly by farmers, AWPA vastly increased the number of workers who would be covered by AWPA and by state workers' compensation laws. The provisions of AWPA, including the provision relating to workers' compensation, were passed with no objection. On August 12, 1983, the Secretary of Labor promulgated the following final regulation implementing the workers' compensation provision:

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[2] Unlike migrant workers, a seasonal worker is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence. *See* 29 U.S.C. §1802(10).

> Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

29 C.F.R. §500.122(b), Pet. App. F, p. 36a.

C. The language and structure of AWPA demonstrates that state workers' compensation benefits were intended to be the exclusive remedy for workers injured on the job.

This Court has long adhered to the sensible rule that where the resolution of a question of federal law turns on a statute, this Court will look first to the language of the statute itself. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 337 (1979). The Court will then look to the legislative history of the statute only if the statutory language is unclear. *Blum v. Stenson*, 465 U.S. 886, 896 (1984).

AWPA expressly acknowledges that it is intended to "supplement," not supplant, state law when it states: "This chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulations." 29 U.S.C. §1871, Pet. App. E, p. 35a. In *DeCanas v. Bica*, 424 U.S. 351 (1976) migrant farm workers challenged a state's law regulating the employment of aliens. This court found the word "supplement" in the identical provision of FLCRA to be "affirmative evidence*** that Congress sanctioned concurrent state legislation on the subject covered by the challenged state law." *Id*. at 363.

Furthermore, AWPA specifically recognizes that workers' compensation benefits shall be the remedy for damages for bodily injuries to covered workers while being transported. Section 1841(b)(1)(C) of AWPA requires every agricultural employer, agricultural association, and farm labor contractor to "have an insurance policy or a liability bond that is in effect which insures the agricultural employer, the agricultural association, or the farm labor contractor against liability for damaged persons or property arising from the ownership, operation, or the causing to be operated, of any vehicle used to transport any migrant or seasonal agricultural worker." *See* Pet. App. E, p. 31a-32a. Section 1841(c) of AWPA, entitled "Adjustments of insurance requirements in event of workers' compensation coverage," adds the following exception:

> If an agricultural employer, agricultural association, or farm labor contractor is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law, the following adjustments in the requirements of subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond apply:
>
> > (1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

See Pet. App. E, p. 32a-33a.

In all states where an employer provides coverage through workers' compensation,[3] an award of those benefits becomes the exclusive remedy for employee injuries. *See* 2A A. Larson, *The Law of Workmen's Compensation*, at 12-1. Nothing in the statutory language of AWPA indicates that these state workers' compensation laws would not govern the actual damages recoverable for bodily injury as defined by that law. Instead, the statute was drafted to give effect to state workers' compensation law as a substitute source of recovery for actual damages for bodily injury. Congress was well aware of workers' compensation laws exclusivity provisions. Certainly if Congress intended AWPA to preempt workers' compensation, the text of AWPA could have expressly preempted state law. The statute's silence on this point is significant and creates the assumption that state workers' compensation law, in its entirety, is incorporated into the statute.

Workers' compensation is a respected, time-honored remedy. As described by this Court in *New York Central R. Co. v. White*, 243 U.S. 188 (1917), the cornerstone of the remedy is its compromise: An injured employee obtains quick and certain moderate recovery for his economic loss regardless of an employer's fault or lack thereof. In

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[3] The number of agricultural workers covered under workers' compensation laws is extensive. Thirteen states plus the District of Columbia require such coverage. Twenty-two other states require such coverage but include some narrow limitations. In the remaining fifteen states, the employer may elect to be included. 4 A. Larson, *The Law of Workmen's Compensation*, App. A 4-1 to A 4-5 (1985 report).

return, the employer cannot be sued for additional damages for those injuries.[4] This Court characterized this tradeoff as "a just settlement of a difficult problem, affecting one of the most important of social relations," that of employer-employee. *Id.* at 202.

This Court has more recently honored the exclusive remedy aspect of workers' compensation law in *United States v. Demko*, 385 U.S. 149 (1966). In *Demko* a federal prisoner claimed he was injured during an assigned prison task and filed both a claim for compensation benefits under the Federal Employees Compensation Act and an award under the Federal Torts Claims Act. This Court denied the claim, basing its decision on the principle that "where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." *Id.* at 152. (relying on *Johansen v. United States*, 343 U.S. 427 (1952) (holding that the Federal Employees Compensation Act was the exclusive remedy for crew members on public vessels.) The very act of incorporating state workers' compensation law into AWPA for bodily injury raises the presumption that it is the exclusive remedy for the recovery of actual damages for bodily injury and lost wages derivative of that injury.

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[4] The remedy under compensation law is exclusive with the exception of the commission of an intentional tort, *i.e.* an act *certain to harm*. *See e.g. Lawton v. Alpine Engineered Products, Inc.*, 498 So. 2d 879 (Fla. 1986). Under both FLCRA and AWPA, "intentional" allegations refer, instead, to the conscious or deliberate violation of statutory provisions despite lack of knowledge of the law. *See Salazar-Calderon v. Presidio Valley Farmers Ass'n.*, 765 F.2d 1334 (5th Cir. 1985).

Where the relationship between the parties places the employer and employee squarely within workers' compensation coverage, AWPA expressly contemplates workers' compensation as the remedy for claims involving bodily injury by providing for this contingency through workers' compensation insurance. The worker need not file suit against his employer and prove fault.[5] On the contrary, recovery is swift and certain. Under Florida workers' compensation, the injured party is provided with all medical treatment, disability benefits where applicable, and two-thirds of lost wages, untaxed. *See Fla. Stat.* §§440.12, 440.13, 440.15 and I.R.C. §104(a)(1). An employer failing to provide compensation coverage is not only permitted to be sued, but loses all of his affirmative defenses. *See Fla. Stat.* §440.06.

By requiring the farmer to purchase only workers' compensation coverage and not both workers' compensation and liability coverage, AWPA expressly indicates that an injured worker cannot seek bodily injury damages against the farmer under both methods. Were this not true, AWPA would require farm employers to purchase both coverages since the statute would not deliberately expose farm employers to uncovered catastrophic losses. So too, if AWPA intended that a worker recover on his workers' compensation and again through a tort-type suit, the Act would require both coverages to insure that

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[5] In a related lawsuit, some of the same plaintiffs that are the respondents here successfully sued the tire manufacturer. In 1987, the jury found the proximate cause of the accident to be a defectively manufactured tire. *Etheridge v. Dunlop North America, Inc.*, Case No. 86-351-CIV-T-(B) (M.D. Fla. 1986)

funds for this additional remedy would be available to the worker. AWPA does not make this requirement, and AWPA professes to provide protection for *all* groups. And certainly it would make no sense for AWPA to provide for workers' compensation coverage if it intended to allow a covered farm worker to ignore his compensation remedy and sue his employer directly for his bodily injuries.

The statute was designed to require farmers to purchase cost-effective workers' compensation insurance to protect the workers. AWPA's insurance provision was designed to spread the risk and protect workers and farms. It was not designed to bankrupt farmers for uncovered catastrophic losses. AWPA provides reasonable and thorough recoveries for migrant workers under its express provisions. AWPA expressly left open a role for compensation benefits, that of providing for recovery of all bodily injury claims for workers injured in transit. Congress obviously knew that all workers' compensation statutes include an exclusivity rule. It makes no sense to suppose that Congress would expressly reserve a place for workers' compensation, but intend to preempt the exclusionary rule *without* saying so in its provision. This Court should not disturb this remedy.

D. The legislative history and purpose of AWPA refutes congressional intent to preempt state workers' compensation law.

In interpreting statutory language, this Court has stated that its duty is "to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and

with the general purposes that Congress manifested." *Commission of Internal Revenue v. Engle*, 464 U.S. 206, 217 (1984). This Court has often referred to the purpose of Congress as "the ultimate touchstone" in any preemption analysis. *Fort Halifox Packing Company, Inc. v. Coyne*, ___ U.S. ___, 107 S.Ct. 2211, 2216 (1987) (citing to *Malone v. White Motor Corp.*, 435 U.S. 497 (1978)). The legislative history of AWPA shows that Congress did not intend to preempt state workers' compensation exclusivity. Furthermore, giving effect to the substantive law of workers' compensation does not stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *California Federal Savings and Loan Association v. Guerra*, ___ U.S. ___, 107 S.Ct. 683 (1987); *Hines v. Davidowitz*, 312 U.S. 52 (1941).

The first and foremost goal of AWPA is expressed in its purpose: protecting both workers and employers. *See* Pet. App. E, p. 31a. AWPA did so by repealing FLCRA and creating a new law that changed the duties and obligations which employers and contractors owed to the migrant or seasonal farm workers. Relative to motor vehicle transport, workers were newly protected because they obtained a private right of action against farm employers, granting them free attorneys to sue to enforce the motor vehicle safety provisions. AWPA ensures that a worker is protected for bodily injury by mandating insurance coverage under either a liability or workers' compensation policy. If a worker cannot avail himself of workers' compensation coverage, the worker may sue to recover under the liability policy. Where a liability policy is not the available remedy, AWPA alternatively contemplates a workers' compensation claim as a substitute.

If the court of appeals' decision below is permitted to stand, an injured farm worker could simultaneously claim and collect workers' compensation benefits and tort damages (past and future pain and suffering, lost future wages and additional past wage losses) in district court. These additional damages are losses for which the farm employer is uninsured because Congress told him it was unnecessary. In order to protect themselves now, the farm employer must, under the court of appeals' opinion, purchase an additional liability policy or bond – insurance that AWPA specifically rejected when workers' compensation coverage existed. For many farmers, even the immediate purchase of double coverage comes too late for claims for past injuries on which the statutes of limitation have not run. These farm employers would already be exposed to liability for past catastrophic losses. It is difficult to accept the premise that a statute designed to clarify rights and duties, to protect all parties, and to prevent unnecessary litigation, was meant to unravel this way. "Interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with legislative purpose are available." *Griffin v. Oceonic Contractors, Inc.*, 458 U.S. 564, 575 (1982). AWPA was designed to work and it was working well until the Eleventh Circuit opinion.

The analysis from the court of appeals is that there will be no deterrent for noncompliance with the motor vehicle safety provisions if the farmer's workers' compensation covers a bodily injury claim under AWPA. AWPA, however, provides that outside the scope of bodily injury claims, the farm worker may still sue to enforce the statute. It is only when a farm worker's

damages are recoverable through workers' compensation, that the farm worker is no longer free to obtain an additional award for bodily injury.

There are a number of additional, sufficient incentives compelling a farmer to provide his workers with safe vehicles despite workers' compensation exclusivity. First, workers' compensation premiums are based on the injury experience rate. If an employer has an unsafe record, his rates will naturally increase. *See* 1 A. Larson, *The Law of Workmen's Compensation*, at 14 & n.18. In Florida, the state requires insurance companies to conduct safety inspections of vehicles used in the work place. Penalties are assessed against companies which fail to comply with a standard set out by the Division of Workers' Compensation. *See Fla. Stat.* §440.56. AWPA can impose criminal sanctions on an employer for violation of safety standards, including fines of up to $1,000.00 and a prison term of up to one year. *See* 29 U.S.C. §1851. The Secretary of Labor can also seek injunctions and impose civil money penalties of up to $1,000.00 for each violation of the provisions. *See* 29 U.S.C. §§1852 and 1853. The court of appeals' opinion totally ignores these menacing and highly motivating provisions.

Finally, AWPA was consistently referred to by its sponsors and drafters as a "consensus bill," a "compromise worked out by farm worker representatives and employer representatives to balance fairness to the migrant workers with fairness to their employers." 128 Cong. Rec. 24,204 (1982) (statement by co-sponsor Senator Quayle); 128 Cong. Rec. 26,010 (1982) (statement of Representative Panetta); House Report at 1-4, Pet. App. H, p. 38a-40a. A compromise, by its very nature, is not

perfect for either side. "While none of these groups believes the bill to be ideal from its individual standpoint, there is important agreement that the bill materially improves the law." 128 Cong. Rec. 24,100 (1982) (statement of Deputy Undersecretary of Labor Collyer). The fact that a farm worker cannot always "have it all" under the Act does not mean that he is not being fully and fairly reimbursed for damages. Congress and the Department of Labor thought long and hard before incorporating workers' compensation into the Act, as witnessed by the concern expressed over workers' compensation exclusivity in the hearings on the 1978 FLCRA Amendments. The drafters were fully cognizant that exclusivity was an integral part of the workers' compensation remedy, yet deliberately chose to incorporate state workers' compensation law into AWPA after weighing all considerations. This workers' compensation compromise should be recognized and respected, not vilified because it may be a less than perfect remedy.

E. The Department of Labor Regulation, clarifying the incorporation of state workers' compensation law for the recovery of damages for bodily injury, correctly interprets AWPA.

The opinion of the court of appeals completely invalidated the Department of Labor regulation promulgated under AWPA which specifically stated:

> (b) Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss

> under the Act in the case of bodily injury or death.

29 C.F.R. §500.122(b), Pet. App. F, p. 36a.

It is difficult to understand the court of appeals' analysis in light of the legislative history of AWPA. The House Report setting out the legislative history of the Act specifically states that the United States Department of Labor representatives were participants in the negotiations which resulted in the consensus bill. House Report at 1, Pet. App. H, p. 38a-40a. Congress also recognized the Department of Labor as a key player in drafting AWPA: "For the past 18 months the Department of Labor has engaged in extensive negotiations with the various interest groups***." 128 Cong. Rec. 24,090 (1982) (statement of co-sponsor Senator Hatch). In the House, Representative Erlenborn recognized the Department of Labor, particularly Assistant Deputy Undersecretary Craig Berrington, as "the leader and negotiator in these extensive give-and-take meetings." 128 Cong. Rec. 26,008 (1982) (statement of Representative Erlenborn). Representative Erlenborn also stated that "all interested parties, agricultural employers, representatives of migrant workers, and the AFL-CIO reached a consensus in support of this bill***With this bill, the parties most affected agree that their problems have been solved." *Id.*

If the regulation drafted by the Department of Labor had not comported with the consensus opinion of the parties affected by AWPA, there was certainly an opportunity to voice an objection before the regulations were finalized. In fact, on April 12, 1983, interim regulations of AWPA and a request for comments were published in Federal Register. 48 Fed. Reg. 15800, No. 71 (April 12,

1983). The publication described AWPA as "the culmination of 18 months of cooperative efforts by the Department of Labor, key members of congressional committees and their staffs, major agricultural employer organizations, the AFL-CIO and the migrant legal action program to bring about needed reform in this area." *Id.* Interested persons were given an opportunity to submit comments to the Wage and Hour Division within 30 days after publication of the interim regulations in the Federal Register. *Id.*

Objections to the wording of the regulations and suggestions for their clarification were set out in the Federal Register published on August 12, 1983. 48 Fed. Reg. 36736, No. 157 (August 12, 1983). The only reference to Section 500.122 in its entirety was a paragraph stating that "in response to suggestions from various commentators, many wording changes were made in these sections to make clear the coverage and level of insurance required by the Act." *Id.* Significantly, no changes were made to the pertinent portion, nor were any objections noted. This regulation was later codified as 29 C.F.R. §500.122(b). If the representatives of the farm workers did not believe that the regulation reflected the intent of AWPA, such an objection could certainly have been submitted at that time. Thus, the consensus opinion upon which AWPA was based contemplated state workers' compensation exclusivity.

Normally, the regulations promulgated by the government body responsible for interpreting or administering a statute are entitled to considerable respect. *Ford Motor Credit Co. v. Cenance*, 452 U.S. 155, 158 n.4 (1981). Furthermore, if a statute is silent or ambiguous with

respect to a question at issue, it is the long standing practice of this Court to defer to the regulating agency's construction of a statutory scheme unless the legislative history, purpose, or construction of a statute "*clearly* reveals a contrary intent on the part of Congress." *Chemical Manufacturers Association v. Natural Resources Defense Council, Inc.*, 470 U.S. 116, 126 (1985) (emphasis added). *See also Japan Whaling Association v. American Cetacean Society*, ___ U.S. ___, 106 S.Ct. 2860, 2868 (1986); *Zenith Radio Corporation v. United States*, 437 U.S. 443, 450-51 (1978).

The most extensive analysis concerning the deference to be given by courts to agency regulations, however, is found in this Court's decision of *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). *Chevron* held that "the power of an administrative agency to administer a congressionally created***program necessarily requires the formulation of policy in the making of rules to fill any gap left, implicitly or explicitly, by Congress." (citing *Morton v. Ruiz*, 415 U.S. 199, 231 (1974)). The *Chevron* decision also noted that "If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of this statute. The court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." *Id.* and n.11. Finally, the *Chevron* court gave the following sensible directive:

> We have long recognized that considerable weight should be accorded to an executive

department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations

"has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations." (citations omitted)

" . . . If this choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned. *United States v. Shimer*, 367 U.S. 374, 382, 383 (1961)."

46 U.S. at 842-845.

In the absence of clear legislative intent to the contrary, the court of appeals was required to give deference to the Department of Labor's regulation.

II.

THE POSITION ADOPTED BY THE COURT OF APPEALS IS UNTENABLE AND UNWORKABLE.

In its opinion below, the court of appeals ignored the intent of AWPA, focused instead on its repealed precursor FLCRA, and then misapplied FLCRA's legislative history. Specifically, the court of appeals reasoned that because Congress rejected an amendment to incorporate

workers' compensation into FLCRA in 1978, that Congress never could have intended to make workers' compensation, where applicable, the exclusive remedy for bodily injury under AWPA. This reasoning misconstrues both the thrust of the congressional hearing surrounding the proposed 1978 amendments to FLCRA and the intent of AWPA to effect a compromise. FLCRA required liability insurance for transient crew leaders, not farm employers, like Adams Fruit. AWPA involved workers' compensation insurance for fixed-situs employers like Adams Fruit, who could purchase workers' compensation coverage for their farm workers. The court of appeals' opinion also misconstrues the testimony of both Representative Ireland[6] and Assistant Secretary of Labor Donald Ellisburg[7] at the 1978 FLCRA hearings. *See* Farm

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[6] Representative Ireland's comments are not accurately stated in the opinion below. His comments involved a potential problem with deleting policy exclusions for workers' compensation coverage in motor vehicle liability policies purchased by labor contractors so that liability coverage could attach. It was the insurance carriers who feared that policies written that way would permit a worker to recover both workers' compensation and liability damages (double dipping). Thus, the carriers were resisting selling insurance to those contractors. Representative Ireland hoped to clarify the role of workers' compensation in those policies through his bill, which would provide that the workers' compensation would be exclusive, if applicable.

[7] The quotations of Mr. Ellisburg contained in the Eleventh Circuit opinion are taken out of context. They fail to include his preceding comments which made clear that he was speaking about the lack of a true employer-employee relationship between workers and transient crew leaders. Thus, he feared that workers' compensation protection was an unsatisfactory component in the regulation for crew leaders under FLCRA.

Labor Contractor Registration Act: Hearings Before the Subcomm. on Economic Opportunity of the Comm. on Educ. and Labor, 95th Cong., 2d Sess. 4 (1978), pp. 34, 56-57. Under FLCRA, Congress weighed the benefits and disadvantages of allowing crew leaders to rely on workers' compensation coverage, and voted down the proposed amendment. The bottom line, however, is that this was legislative history peculiar to FLCRA, *not* to AWPA.

The court of appeals' proposal to offset workers' compensation coverage from the amount received through an additional lawsuit under AWPA is an unworkable and vaguely-defined solution. First, a set-off would turn every workers' compensation claim into a mere preliminary step before an additional full-blown federal tort-trial for the same bodily injuries. This approach would generate excessive and needless litigation. In many cases, a set-off is impossible under some states workers' compensation plans. For example, an Oregon court recently followed the court of appeals' reasoning in *Fletes v. John I. Haas, Inc.*, Civ. No. 89-89 FR (D.Ore. 1989) Pet. App. I, p. 41a, entering judgment for the plaintiffs, but permitting workers' compensation set-off. However, the duty to provide medical services under Oregon workers' compensation law continues for the life of the worker. *See* ORS 656.245(1). This makes set-off impossible to determine and provides overlapping recovery. Furthermore, there is nothing to prevent a farm worker from recovering benefits for bodily injuries in an action under AWPA from his employer and then subsequently recovering benefits under state workers' compensation laws when it is simply too late to provide for an offset.

Finally, and most importantly, the court of appeals' decision would leave farm employers scrambling for duplicate insurance coverage when Congress expressly assured them that "no additional insurance for damage to persons need be obtained." House Report at 20. This solution leaves farmers unprotected for present and past claims where statutes of limitation have not run. Some of these claims could involve catastrophic injuries that could bankrupt the farm employer. It is inconceivable that Congress *intended* this result when it drafted its consensus statute to clarify obligations and to protect all concerned.

In sum, the court of appeals' opinion was misguided. Adams Fruit Company requests this Court to reverse the judgment below and to remand with instructions consistent with the judgment entered by the Middle District of Florida, holding that the workers received their actual damages for bodily injury and resultant lost wages through workers' compensation benefits.

CONCLUSION

The judgment of the court of appeals below should be reversed and remanded with instructions consistent with the order of the Middle District of Florida granting summary judgment to the petitioner, Adams Fruit Co.

Respectfully submitted,

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